IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1962

No. [redacted] 8

CHARLES TOWNSEND,
Petitioner,

vs.

FRANK G. SAIN, SHERIFF OF COOK COUNTY, AND JACK JOHNSON, WARDEN OF THE COOK COUNTY JAIL,
Respondents.

SUGGESTIONS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BENJAMIN S. ADAMOWSKI,
State's Attorney of Cook County, Illinois,
507 County Building,
Chicago 2, Illinois,
FRanklin 2-3000,
Attorney for Respondents.

FRANCIS X. RILEY,
Assistant State's Attorney,
Of Counsel.

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A.

OPINIONS AND ORDERS IN THE COURTS BELOW.

In chronological order the following opinions and orders have been issued in the courts below:

1. (a) The defendant was convicted of murder in the Criminal Court of Cook County, and, after a full appellate rehearing, his conviction was affirmed by the Supreme Court of the State of Illinois, *People* v. *Townsend*, 11 Ill. 2d 30.

(b) *Certiorari* was denied by this Court (Douglas, *J.*, *contra*), *Townsend* v. *Illinois*, 355 U. S. 850.

(c) This Court denied a rehearing. 355 U. S. 886.

2. (a) The defendant applied for an order to set aside his conviction and for a new trial pursuant to the Illinois Post Conviction Hearing Act (R. E12). The trial court dismissed the petition (R. E3).

(b) The Supreme Court of the State of Illinois denied defendant's application for a writ of error, in an unreported order, because:

(i) "• • • the injection of hyoscine and phenobarbital was carefully considered by us in resolving the issue of the validity of petitioner's confession;" (R. A30), and

(ii) not only were hyoscine and scopolamine identified as the same drug at the trial, but "the mere fact that the drug which was administered to petitioner is known by two different names presents no constitutional issue" (R. A31).

(c) This Court denied *certiorari*, unanimously, *Townsend* v. *Illinois*, 358 U. S. 887.

3. (a) The defendant then commenced the proceedings below under the federal Habeas Corpus Act, asking that court to "grant petitioner a full hearing," and praying for an order setting aside his conviction and for a new trial, verbatim with the prayer of his state post conviction petition (R. A20 and E21-22). The district court discharged the rule to show cause and dismissed the petition for a writ of *habeas corpus* (R. A39).

(b) The Court of Appeals for the Seventh Circuit affirmed that order, *United States ex rel. Townsend* v. *Sain*, 265 F. 2d 660.

(c) This Court entered an order granting *certiorari*. Contemporaneously it vacated the order of the Court of Appeals, and remanded it. The citation of *United States ex rel. Jennings* v. *Ragen*, 358 U. S. 276, in that order informed the courts below that, examination of the entire state court record is a *sine quo non*, to denial of relief in federal *Habeas Corpus*. *Townsend* v. *Sain*, 359 U. S. 64.

4. (a) Upon remand, these respondents amended their answer by appending "the entire and complete records of petitioner's state court conviction [Vols. B, C and D] and his state court post-conviction proceedings" [Vol. E] (R. F135). The district court, from an examination of the "state criminal and post-conviction proceedings," "is satisfied upon the full records before it that the findings of the state courts, that the challenged confession was freely and voluntarily given by petitioner are correct, and that there has been no denial of federal due process of law" (R. F136). The district court ordered the "Rule discharged and petition dismissed" (R. F137).

(b) The Court of Appeals for the Seventh Circuit also reviewed these state court records, and from them related, "the basic undisputed facts." *United States ex rel. Townsend* v. *Sain*, 276 F. 2d 324, 325, 326. The Court of Appeals affirmed the district court (276 F. 2d at 330), after charging that,

> "petitioner goes far beyond what appears in the records of the state courts in his case as to the effects of the injection of hyoscine and phenobarbital to relieve one who is suffering from the results of narcotics withdrawal."

Additionally, the court characterized the expression, "truth serum," as "borrowed * * * from the jargon of science fiction" (276 F. 2d at 329).

(c) The Court of Appeals affirmed the order of the district court on April 7, 1960 (see order filed in *Townsend* v. *Sain*, No. 219, Oct. Term, 1960). These respondents resisted on May 13, 1960, the recall of the mandate of the Court of Appeals; the gratuitous return of the state court records to the federal courts; and, the extension of time to file the application for a writ of *certiorari* in this Court. (See: Suggestions in Opposition to Motion for Extension of Time, filed July 1, 1960.)

(d) This Court granted the extension to July 14, 1960, when this application here was filed.

B.

JURISDICTION OF THIS COURT.

The petitioner here invoked the jurisdiction of the district court, pursuant to chapter 153 of the Judicial Code; specifically, because he claimed he was a prisoner in an Illinois Penitentiary, "in violation of the constitution • • • of the United States" (28 U. S. C. A. 2241(c)(3)). This Court may exercise its jurisdiction pursuant to statute (28 U. S. C. A. 1254(1)).

The final order of the Court below was entered April 7, 1960. This Court granted an extension to July 14, 1960, for the filing of the application here.

C.

CONSTITUTIONAL PROVISION.

The gravamen of the petitioner's claim lies in the interdiction of the 14th Amendment to the Constitution of the United States: "Nor shall any State deprive any person of life, liberty, or property without due process of law • • •" (Section 1).

The respondents did not in the courts below, state or federal, and do not in this court suggest or maintain, that a drug-induced confession is either competent evidence, or that it lies within state or federal constitutional concepts of due process. The respondents recognize and respect that principle whether the drug which inspired the confession is administered from proper motives, or with malicious intent.

D.

QUESTIONS PRESENTED FOR REVIEW.

1. May the district court in a federal *habeas corpus* proceeding accept the state trial record in support of finding federal due process; or, must it, notwithstanding this court's order in *Rogers* v. *Richmond*, 357 U. S. 220, take other, additional testimony simply because the petitioner urges it?

2. Where the state court trial record effectively rebuts the petitioner's allegations of denial of federal due process, must the district court nevertheless permit other, additional testimony in order to rule on federal sufficiency?

3. Do the petition and a traverse, which admits "the factual allegations of the petition well pleaded, but deny that petitioner is held in custody * * * in violation of the Constitution or laws of the United States" (R. A28), supplant the state court trial record, in the determination of whether the petitioner was accorded federal due process?

4. Was the petitioner denied federal due process when after extensive hearing, the state trial court ruled a confession voluntary, and a jury after receiving equally extensive testimony accepted the confession as credible.

The confession which was given orally (but, subsequent to medical treatment requested by the petitioner who was discomfited by a narcotics withdrawal reaction, and who was treated by a physician called by the police to treat him, and who gave him the same treatment, effective over a period of fourteen years to some thirty-five hundred narcotics addicts, and, which consisted of about 2 ccs of sterile solution into which was dropped ¼ grain of sodium phenobarbital and 1/230 grain of hyoscine hydrobromide, which he injected by hypodermic needle into the shoulder of the petitioner), was taken by an Assistant State's Attorney,

recorded by a professional reporter, transcribed in four typewritten pages, and signed by petitioner some fourteen hours after it was given?

5. Whether this Court must make the fact declaration that two ccs of sterile solution into which are dropped ¼ grain of sodium phenobarbital and 1/230 grain of hyoscine hydrobromide, injected into the shoulder of a person in need of that proper medication, who subsequently confesses to a crime, has been denied federal due process, if the confession is used at a later trial for the crime confessed?

E.

STATEMENT OF THE CASE.

In an effort to present to this Court, as was presented to the courts below, a coherent statement of the record facts developed in the trial of the defendant on his indictment, the respondents here set forth in narrative form the developments in the state court. These facts are divided into three sections called "Undisputed Record Facts" (*infra*, pp. 6-13), "Disputed Fact Issues Created" (*infra*, pp. 13-23) and "Expert Testimony" (*infra*, pp. 23-29). (The "R" designation refers to the 3-volume record pages of petitioner's criminal court conviction (B, C, D).)

Undisputed Record Facts.

The material undisputed record facts (R. 597-642) disclose that Jack Boone, Sr., about 43 years of age, a steelworker living with his wife and their two boys at 3754 S. Michigan Avenue, Chicago, left for work at a steel mill the morning of December 18, 1953. The building in which he and his family lived, an apartment house, was set back from the sidewalk about 100 feet and was reached by walking along a narrow passageway, dimly illuminated,

but wide enough to accommodate a car, adjoining a neighboring building. About 6 o'clock that evening, another occupant of the building and a friend of the Boone family, Helen Clark, discovered the senior Boone lying in the passageway, face down, with blood on the back of his head behind his right ear. Boone's wife was called and Boone taken first into the family apartment and then shortly afterward to a hospital where on December 21, 1953, he died.

When Boone had left for work that morning of December 18, he wore no wrist watch, which his wife kept, and had a pocket wallet and about $4 on his person. The wallet was discovered on December 19, at about 10 or 11 a.m., in an apartment building at 117 East 37th Place, by a 12-year old boy living in one of the apartments of the building, which was not too far from the building occupied by the Boones. The boy gave the wallet to his father that same morning, a Saturday, and the father gave it to a cousin of his wife who in turn gave it to Mrs. Boone, and Mrs. Boone turned it over to a Chicago police officer, George Martin, on January 5, 1954.

On December 29, 1953, Chicago police had arrested and taken into custody one Vincent Campbell (R. C769-771), later convicted, sentenced and committed for robbery (R. 761). While still in police custody the early morning of January 1, 1954, he accompanied police officers George Martin, John Fitzgerald, Edward Cagney and Joseph Corcoran in a squad car to the vicinity of 35th and South Indiana, where he identified petitioner Charles Townsend walking with a friend for the police officers (R. C643-5, C757-8). From his uncontroverted testimony at the trial, it appears that Campbell knew Townsend well; that about the middle of December, 1953, on a weekend, probably a Friday, although he could not recall the exact date, he saw Townsend in the neighborhood, walking along, a

housebrick in his hand. He asked him how he was doing, and Townsend said he was going to make some money. He next saw Townsend some 3 or 4 hours later in a billiard hall at 35th and South Prairie. Townsend came in carrying a brown paper bag, torn at one end, wrapped around a housebrick, which he laid on a bench nearby, and asked to play with them (R. 745-62).

When arrested January 1, 1954, at about 1:45 a.m., petitioner was 19 years of age and a confirmed heroin addict since about 1952 sometime, less some months during the forepart of 1953, and by December, 1953, often was taking as much as 6 capsules of heroin daily (R. B92-3, B158-61, C811). At about midnight, or 1½ hours prior to his arrest, he had injected himself intravenously with 2½ capsules of heroin (R. B93, B192, B810). Except for a period of 8 or 9 days that he worked intermittently in a restaurant, petitioner had been unemployed throughout 1953 (R. B160-1). According to the further testimony of the director of the behavior clinic of the criminal court of Cook County, who supervised petitioner's court-ordered psychological and mental condition shortly before his trial to determine his ability to cooperate with his attorneys and conduct his defense, petitioner's diagnosis showed a character disorder and drug addiction, and a formal psychological I. Q. of 63 was determined for him (R. C782-4, D1027), which translated in terms of his mental I. Q. attained for petitioner a range between 75-80, still in the area of border-line or below average intelligence, classifying as a mental defective, but legally sane, and comparing favorably to the World War II U. S. Army average mental I. Q. of 78 (R. D1027-30).

The police officers took petitioner in their squad car to the 2nd district police station at 29th street and South Prairie, where they arrived at about 2:30 a.m., and where for 5 or 10 minutes petitioner was asked his name, address,

and so on by the lockup keeper who made out the arrest slip (R. B95, B251-2, B256). Townsend was wearing a dark suit (R. B398), tieless, with a sport shirt (R. B347), neatly dressed, and replied to the questions of the lockup keeper clearly and coherently (R. B253). Then petitioner was taken by the four arresting officers to one of the detectives' rooms of the station, close-by, and there questioned for 30 or 35 minutes by officers Fitzgerald, Cagney and Corcoran concerning various crimes which petitioner denied having committed (R. B96, B253-4, B281, C647, C656). Following his removal from the detectives' room he was placed in the women's cell, alone, and at about 5:00 a.m. removed for transfer to the 19th district station, located near 35th street and South Wentworth avenue, where he arrived about 5:10 a. m. (R. B97-8, B170, B254, B257, B262). He was interrogated by no one there and he remained there until that evening, sometimes lying on his bunk, sometimes sleeping or sitting on it, when he was returned to the 2d district station about 8:30 p.m. (R. B98, B100, B170, B269, B270-3).

About 8:30 p.m. petitioner was removed from his cell by officers Cagney and Fitzgerald (R. B99-100, B273). Sometime thereafter, a show-up was conducted in one of the three detectives' rooms, with petitioner and three other prisoners viewed by an insurance agent, Gus Anagnost, who identified one of the other three as the man who had robbed him and then left the room (R. B102-4, B292, B349-55, B423-4, B476-7). Immediately thereafter a fight broke out between Townsend and the other prisoner identified just previously by the insurance agent (R. B355, B426-8, C704-5, C826-7). Townsend was not injured (R. 357). All four arresting officers witnessed the show-up which lasted about 10 minutes (R. B295, B349, B423-5, B477-8).

Petitioner shortly thereafter was questioned in the same room, without the other prisoners present, by officer Cagney

about the Boone killing and other matters for at least 10 minutes (R. B107, B347-50, B649-52). At least up until the time of the show-up defendant's appearance and statements to the several lockup keepers at the 2d and 19th district police stations, the several policemen who had driven him to and from the stations and back to the 2d district station, and to the arresting officers were neat and normal in appearance and clear, distinct and coherent in speech and conversation (R. B252, B260-1, B263-4, B267, B276, B322, B347, B422-3). As early as shortly after his arrest, he had admitted that he was a narcotics addict to the arresting officers, and that he had only 1½ hours earlier given himself a shot, although he complained to no one, at least up until the time he had been returned to the 2d district station at about 8:30 p. m., that he was sick (R. B99, B267, B270, B273, B323, B355, B358, B422). It was sometime during the questioning by Cagney, although it is disputed whether in one of the cells or in the detectives' room, that petitioner complained of "stomach" pains, was occasionally holding his abdomen, and Cagney then telephoned from the station for a doctor (R. B108, B109-10, B352-3, B357-8, B360-1).

Shortly afterward the doctor came, a police surgeon assigned to the central police station located at 11th and State streets (R. B111, B211). Earlier, an assistant state's attorney had arrived at the 2d district police station (R. B296, B352, B430-1, B447, B479, B481). When the doctor arrived he entered one of the detectives' rooms where petitioner was waiting (R. B112-6, B334). Cagney was present (R. B116, B334, B367-8) when the doctor examined petitioner, after requesting him to unbutton his shirt, testing his heart and eyes, and when he used a hypodermic syringe to inject a solution into petitioner (R. B111-3, D982).

Before making the hypodermic injection, the doctor asked Cagney to obtain a glass of water, then rinsed the needle

and syringe in the saline solution, having first dropped into the glass a sodium chloride tablet. Then he withdrew about 2cc.'s of sterile solution into the syringe from a little bottle, dropped a 1/8 grain of sodium phenobarbital and a 1/230 grain of hyoscine hydrobromide into the syringe solution to dissolve them and injected the solution into petitioner (R. B112-3, B214-5, B240, D981-2, D988-9). He left four ¼ grain phenobarbitals, five according to petitioner's testimony, giving them to petitioner, and instructed him to take two around midnight and the others in the morning. Petitioner took two that night sometime and the remainder the next day (R. B114-5, B126, B198, B216, B235, C835, C850-1). While on the preliminary hearing petitioner testified that he was neither questioned by nor saw an assistant state's attorney that evening or before sometime in the afternoon of the following day, January 2, at the state's attorney's office in the criminal court's building at 26th street and south California avenue, he later testified on the trial that he could not remember seeing the assistant state's attorney before January 2, and then, through impeachment by way of a transcript of his testimony in his earlier trial under indictment No. 54-10 tried in 1954, admitted that he had previously in the earlier case testified under oath that he had seen and given a statement to the assistant state's attorney the evening of January 1, at the 2d district police station (R. B132, C877-902).

When the doctor left, and sometime afterward, he was returned to his cell, although it is disputed whether he was again removed and taken again that evening to one of the detectives' rooms before finally being locked up for the night (R. B122-5, B172-7, B272-3, B297-304).

He was not questioned or disturbed until sometime between 11:00 a. m.-1:00 p. m. of the following day, Saturday, January 2, 1959, when he saw and talked with Cagney and Fitzgerald and the other two arresting officers, Corcoran

and Martin (R. B126-33, B275-6, B305, B375, B393-4, B429, B482), at which time he was told he would be going to the state's attorney's office. He was taken there in a police car by officers Cagney, Fitzgerald, Corcoran, and one Ellington who was not a police officer but a witness (R. B133-4, B177-8, B305, B375-6, B482). They arrived at the state's attorney's office, where they saw the assistant state's attorney who had been at the 2d district station the night before (R. B133-4; B178-9, B306-8, B339, B376, B441). There, after having been given a copy of a transcribed typewritten statement consisting of four pages by the assistant state's attorney, and having been asked by the assistant to read petitioner's copy while the assistant read the original transcription, petitioner signed each page in the presence of the assistant, and in the presence of Cagney and Fitzgerald who witnessed petitioner's signature to People's Exhibit 2 in evidence (R. B135-6, B286, B288-9, B306-7, B339-41, B376, B442-4, C714-5, C717, C737, C739-43). This transcribed confession, which was read into the record before the jury (R. C739-43), shows that before making his answers to the questions to tell the truth he acknowledged that no threats or promises had been made to induce his confession. After signing his confession, petitioner was returned to the 2d district police station where he arrived about 3:00 p. m. of the same day, Saturday, January 2 (R. B138, B307, B311, B394). The lockup keeper observed nothing unusual about petitioner's appearance upon the latter's return, talked to him briefly, and petitioner spoke coherently and didn't complain about anything (R. B394-5).

Sunday, January 3, all four arresting officers questioned petitioner from time to time, removing petitioner each time from his cell and taking him to the detectives' room, beginning about 10:00 a. m. and irregularly thereafter up until about 4:00 p. m. (R. B277, B312-6, B434-5, 489). That

evening he asked Cagney to get the doctor for him again, telling Cagney that he was not feeling too well, and Cagney again telephoned for the doctor, the police surgeon who previously had treated petitioner, and the doctor arrived that evening (R. B138, B229-1, B387-8). Petitioner told the doctor that he was not feeling too well and was given a number of white tablets, each ½ grain phenobarbital, to take orally (R. B139, B221, B239, C850-1).

The following morning, Monday, January 4, petitioner was taken to the coroner's inquest at the Cook county morgue, which was open to and attended by the public, among whom was his sister, the assistant state's attorney who had previously taken the statement from him, and the four arresting police officers. Petitioner there under oath, and after being advised of his rights not to testify and that any statement made by him might subsequently be used as evidence against him, proceeded again to confess the Boone murder (R. B143-8, B178-81, B184, B316-7, B380-1, B383-5, B433-5, B445, B488, C692, C905).

Disputed Fact Issues Created.

Petitioner, either by his testimony at the preliminary hearing or later at the trial, or on both occasions, made statements, contradicted or disputed by the testimony and evidence of the prosecution, which give rise to the issues in the *habeas corpus* proceeding.

Petitioner testified that when taken to the 2d district station, following his arrest the early morning of January 1, 1959, he was shortly interrogated by officers Cagney and Fitzgerald for about 5-10 minutes about the Boone murder and denied any knowledge of it (R. B95-96), and that he was interrogated for a total of 30 minutes (R. B96). He was again interrogted about 4:00 or 5:00 a. m. of that same morning before leaving for the 19th district

station (R. B97). Questioning was resumed at the 2d district station by officers Cagney and Fitzgerald, Martin and Corcoran, at about 9:00 p. m., following his return that same day (R. B99, B101, B156-8). While he did not complain to anyone, he had not been fed or given anything to drink up to this time (R. B99, C816), although he later testified at the trial that he had drunk some water (R. C816). He otherwise testified only that one of the 2nd district station lockup keepers came around with sandwiches sometime Sunday, January 3 (R. B141).

Before being questioned, however, there was a show-up first, in which he stood with Vernon Campbell, George O. Jackson and Theodore Redd, while they were viewed by an insurance man who identified Redd as his robber (R. B102, C823). (Then officer Cagney stepped out of the detectives' room with the insurance man into the hallway and petitioner heard Cagney telling the insurance man that he had identified the wrong man, that he should have put the finger on petitioner, while the insurance man was telling Cagney that he himself should know who had robbed him and that he had correctly identified Redd.) (R. B102-4.) Officer Fitzgerald, who also had gone out of the room, then returned and hit petitioner in the abdomen, saying that petitioner knew he was the one, and petitioner fell to the floor, on his knees, and vomited water and blood (R. B105-6, C827). (Earlier, at the same time, or shortly thereafter, petitioner does not clearly indicate, except that after his return to the 2nd district station, first Fitzgerald and then Cagney slapped his face [R. C819, C821].) Earlier (it is to be supposed), following the identification by the insurance man, petitioner had turned to Redd and asked him if he was satisfied, since the other three prisoners in the show-up with him had "told lies" on him, and he and Redd started to fight and struggled to the floor where they were finally separated by the police officers (R. C826-7).

Shortly thereafter, the police officers began to question him again and then returned him to his cell (R. B107). Then Cagney talked to petitioner in his cell for 5-10 minutes, asked petitioner if he was sick and petitioner told him he was sick from using narcotics (R. B107-8). About 5-10 minutes later he saw Cagney in the detectives' room and Cagney told him that he would call the doctor (R. 110). Shortly after that the doctor came in the room (R. 111), but not before first stopping in the hallway and conferring with the police officers, defendant charged (R. B112). This was about 10:00 p. m. and the doctor did not stay longer than a few minutes (R. B114, B171). He told petitioner to unbutton his shirt, checked his heart, looked at his eyes, and opened a little black bag and took out some powder. This he put in a syringe and dissolved it with water, then tied petitioner's left arm with a rubber band until a vein bulged and injected the solution into the vein (R. B112-3). The doctor then gave him five pink or red pills or capsules to take, two then and the others in the morning (R. B114-5, 197-8). He took three with water (R. B115, B198). All four arresting police officers were present at the time, and Cagney then asked him how he felt, and he said "all right" (R. B116-7). Up to that time he had denied all criminal accusations (R. B111).

Then they brought in the insurance man again, and by this time he was feeling "dizzy, sleepy, in other words" (R. B117, B119). He could see, but no more than two feet in front of himself, although he had been able to see all right before getting the drug injection, and things now looked dim, and he could no longer hear too well (R. B118-9). He heard someone saying something to him, telling him to tell the insurance man that he had robbed him, and he said, yes, and he does not know why he said that (R. B120). He had no memory after the drugs (R. B151).

The next thing he seemed to remember is having sat

next to a desk and seeing a person he did not know, and he wanted very badly to sleep and actually fell asleep once but was awakened by Cagney near him (R. B121-2). He still could see only badly. Cagney handed him a pen and told him to sign his name "here," and he asked if he was going out on bond, and Cagney said, yes, that was it. He can not recall what he signed (R. B122-3). Then he was taken back to his cell, he assumes, because he can remember only that Cagney came to get him again, waking him and taking him back into the detectives' room (R. B123, B172-5). There were quite a number of people in the room, and bright lights were flickering in his face, and he could not recognize anybody or see very well (R. B123, B176). He was sitting and was told to hold his head up. Cagney standing near him told him to hold up his head and then went away, and the lights flickered for a minute or so and he was again returned to his cell where he was left undisturbed the remainder of that night (R. B124-5, B176).

He took the rest of the pills the next afternoon, Saturday, January 2 (R. B126). Up to Saturday morning he did not remember having confessed to anyone that he murdered Boone. His head was now much clearer (R. B126). But when he saw Cagney that morning while in his cell about 10:00-11:00 a. m., Cagney showed petitioner his picture in a newspaper and asked him to read it, and he did and he read that he had confessed last night (R. B123, B127). Then he was taken to the detectives' little room again and there questioned by Fitzgerald and, afterward, by Cagney and the other two, about all the robberies and murders around 35th street and he confessed to all of them (R. B128-30). Then he was told that he was going to the state's attorney's office (R. B131).

No assistant state's attorney had talked to him prior to this time, and he couldn't remember any statements he

had made Friday night that Cagney told him he was going to sign at the state's attorney's office (R. B132-3). He had no clear memory again until Saturday afternoon (R. B152). The assistant state's attorney he later saw that afternoon at the criminal court's building he had never seen before (R. B135). The assistant handed him some papers and asked petitioner to read along with him. He was still half-asleep, could not see as well as ordinarily and neither could make out the words on the papers nor understand what the assistant was reading (R. B135). Cagney then asked him to sign and he signed without objection, he did not care, although he does not know why (R. B136). Then he was returned to the 2d district station (R. B138).

Earlier at the station he had told Cagney that he was not feeling well. The papers he signed he did not read and did not know what they were (R. B138).

When he saw the doctor again Sunday night, the following day, January 3, he told the doctor he was not feeling well and received 6 or 7 white pills that looked like aspirin, and was instructed to take four at that time and the rest the following morning, Monday (R. B139, C850-1). After that his eyes refused to stay shut and he could not sleep at all, but took the rest of the pills Monday morning (R. B140, C850-1).

Monday morning, January 4, he went to the inquest, but not before Cagney had again taken him into one of the detectives' rooms, where the other arresting officers were present, and asked him if he could remember his confession of Friday night (R. B140-3). And he said, "I don't even remember making no statement at all," and with that all the police officers laughed (R. B143). So Cagney read the statement to him, and later in the police car told him not to change his statement at the inquest that he had made (R. B143). Then at the inquest he testified and admitted the Boone murder (R. B148).

In 1953, he testified, a heroin injection gave him a high sensation and then gradually faded out from the initial greater effect in about 45 minutes (R. B194-5). After 4 5 hours the effect completely wore off and he would come ill, get nervous and begin to sweat, with slight ins in stomach and chest, and he experienced all of these nptoms of narcotic withdrawal on January 1, 1959, be- e the doctor visited him (R. B196).

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he controverted testimony and evidence for the prose- on was that defendant was not specifically questioned at the Boone murder until about 9:00 p.m. Friday, uary 1 (R. B372-3, C647-9, C656), and at that time in ver to one of Cagney's specific questions admitted the ne murder and robbery (R. C649-652). He was being for investigation of several murders and robberies (R. 1). Nor was he questioned again concerning anything around 4:55 a.m. Friday when he was transferred to 9th district station (R. B254-5). At the 19th district on, he was offered a sandwich by the lockup keeper but ed it (R. B267). The arresting police officers, now nd then another, questioned petitioner after the short -up and until the arrival of the assistant state's attor- (R. B348-52).

e show-up began at about 8:45 p.m. (R. B423, B427,) and lasted about 10-15 minutes (R. B478). In the -up with petitioner were Vernon Campbell, Oliver son, and George Hare (R. B292, C682). The Metro- an Life insurance agent identified Oliver Johnson and and never was brought back (R. B292, B353, B424, 8). None of the police officers thereafter talked to or the insurance agent to change his identification, or urn, or later caused petitioner to admit he robbed him 293, B336, B353-4, B425-6, B479). After the insur-

ance man stepped out, and was led out by officers Fitzgerald and Cagney, petitioner laughed and Oliver Johnson said, "What do you want to do me like that for?" and then swung at Townsend with his fist until they ended wrestling on the floor and were separated by officers Corcoran and Martin just before the commotion brought Fitzgerald and Cagney back into the room (R. B355, B426-7, C704-5, C774). A short time later Townsend said to Oliver Johnson, "Don't worry, man, I'll take you off the hook" (R. C705). Then Vernon Campbell said to Townsend, "Charley, why don't you tell the truth and tell them you are the guy that is going around hitting people on the head with a brick?" (R. C705-6).

The arresting police officers and lockup keepers denied that at anytime earlier, or at the show-up, or following it, they in any manner struck, hit, threatened or otherwise abused the petitioner, themselves, or saw any other police officer do so in their presence (R. B255, B283, B334-5, B337, B340, B417-8, B467-8). Nor, the police officers and lockup keepers testified, did petitioner during that period complain in any manner (R. B255, B267, B270, B273). Further, the arresting police officers all testified, no promises of any kind were made that they would attempt, in return for his confession, to get morphine for him, send him to the hospital, or get a doctor or see that he would obtain lenience or immunity from prosecution (R. B283, B284, B334-6, B337, B341-2, B418, B468, B470). None of them saw petitioner vomit water or blood or saw any blood or water (R. B283-4, B294, B335, B418, B433, B467). The two janitors who worked the material shift on the morning of Saturday, January 2, beginning at 6:00 a. m., found no blood or water in any of the detectives' rooms (R. B401-8, 410-14). During the period in question, petitioner further did not appear nervous, sweat or exhibit other unusual behavior; rather, he spoke coherently and otherwise behaved quite normally (R. B322-4, B347, B359, B362, B423, B479-80).

Sometime not too long after the show-up, however, defendant did begin to complain and asked to see a doctor, and began to complain of abdominal pains and was holding his abdomen with his hands occasionally and leaning over (R. B353, B355, B357, B360-61, B428). He asked for a "jolt" (R. B353, 428). He also wanted a doctor and Cagney called for the police surgeon. Prior to the latter's arrival, the assistant state's attorney arrived about 9:30 p. m. (R. B352, B430-31, B447, B481). He saw petitioner in one of the detectives' rooms in about 5 minutes (R. B297, B447). The assistant, in Cagney's presence, asked the petitioner a few questions but petitioner stated that he would rather not talk until he saw a doctor and meanwhile was nervous, complaining of abdominal pains. The assistant asked petitioner if he wanted a doctor and petitioner said, yes, and then Cagney stated that he had already called for the doctor. The assistant left the room and the doctor came shortly (R. B358-66, B447-9). The doctor was directed to the detectives' room by the desk sergeant when he arrived about 9:45 p. m. and spoke to none of the arresting police officers before seeing and administering to petitioner in Cagney's presence (R. B223-4, B284, B293-5, B334, B359, B366-8, B429-31, B449, B469, B479).

The police surgeon thoroughly examined Townsend's chest, back, neck, head, face, arms, hands, and palpated over petitioner's chest with his hand and fingers, and then used his stethoscope. He asked petitioner about the marks on his left arm and Townsend then explained that he was sick because of narcotics withdrawal and described his pains for the doctor. The doctor further observed a cold perspiration over Townsend's face, neck, body and arms. He diagnosed petitioner's symptoms as resulting from drug addiction and withdrawal (R. B212-5). He dissolved a tablet (sodium phenobarbital) and a piece of a tablet, not powder (hyoscine), in the syringe, and after the

injection gave petitioner white tablets, not pink or red, and gave him four only (R. B214-7, B235-6). The doctor did not tie a rubber band or anything around petitioner's arm but injected the drug solution into the shoulder muscle of petitioner's left arm, not in any of the veins of his arm. (R. B368, D982). Examination by the doctor disclosed no bruises on or about the body, and petitioner neither complained of any nor of nausea (R. B222). Nor could he see or smell any evidence of vomit (R. B223). Following the injection, petitioner said he felt better (R. B370). He put the four tablets given to him by the doctor in one of his pockets and took none, if any, until midnight or thereabout (R. B304, B341, B370).

Petitioner had not specifically been questioned about the Boone murder until about 9:00 p. m. for the first time since his arrest (R. B372, B433, B656). Following the doctor's treatment and immediate departure thereafter, which was about 10:30 p. m. (R. B216, B298, B370, B456), petitioner was again visited by the assistant state's attorney, who either then or earlier had already been introduced as such to petitioner (R. B371, B450), and was questioned by the assistant about 25 minutes (R. 372). The assistant asked Townsend how he felt, that petitioner replied, all right, and observed that Townsend, earlier before the doctor's arrival had been shaking a little and complaining of cold chills (R. B448, B450, B456), now exhibited a normal appearance and spoke more strongly (R. B455-7). He did not know what the doctor had administered to petitioner, if anything, but knew petitioner had been seen by the doctor (R. B451). He would not have questioned petitioner if he had known that the doctor had given petitioner anything to affect adversely his mental processes (R. B452-4).

Thereafter, petitioner, the assistant and Fitzgerald and Cagney, two of the arresting police officers, including now a court reporter employed by the state's attorney's office,

went into another of the detectives' rooms, a larger room, where there was a desk and petitioner's confession concerning the Boone murder was dictated to the court reporter for about 10 minutes, beginning about 11:15 p.m., and where only the assistant questioned petitioner who answered clearly, distinctly and coherently (R. B282, B298-9, B301, B370-73, B391-2, B439-40, B444-5, B457-9). None of these saw or observed petitioner pushed or shaken awake, or asleep, or abused him, or threatened or promised him in anyway or thing in connection with his confession, or held his head up, or heard complaints concerning petitioner's vision, and petitioner in fact was sitting quite erect (R. B302-3, B336-8, B441, B459). Petitioner was returned to his cell about 11:45 p. m. that night, January 1, and was questioned no further that night (R. B275-7, B304, B374-5, B481). The assistant state's attorney had left about 11:30 p. m. (R. C726-7).

The arresting police officers testified that none of them, nor anyone in their presence, ever gave papers to petitioner to sign or put a pen in his hand, or in any manner induced him to or saw him identify himself to the insurance agent as the robber, or see lights flickering the evening of January 1, or any other time, or show him a newspaper the following morning, Saturday, January 2 (R. B285-6, B336-8, B418-9, B469, B472, B487). No newspaper photographs were taken until later that Saturday afternoon while petitioner was going into the state's attorney's office and later at the inquest (R. B380).

At the state's attorney's office that Saturday afternoon, January 2, petitioner was given a copy of the confession to the Boone murder stenographically recorded Friday night and now transcribed and typewritten and appeared to be following the assistant state's attorney while the latter read from the original. Townsend then signed each of the four pages. He did not appear sleepy or complain in any

manner. Nor was petitioner abused, threatened or promised anything to obtain his signatures (R. B286-9; B308-10, B340-41, B376-9, B440-45). On Sunday, January 3, in the evening, the doctor gave petitioner only two more 1/4 grain phenobarbital tablets (R. B238-9).

The police officers denied that at anytime Saturday they questioned petitioner further about the Boone murder (R. B311-6, B432-5, B438, B489), or in anywise prompted him either before the visit to the state's attorney's office or before his appearance at the coroner's inquest, afterward, on Monday, January 4, where petitioner for the fourth time since his arrest again confessed the Boone murder (R. B287-8, B315-7, B339, B341-4, B418-9, B471-2).

Expert Testimony.

Dr. Mansfield, the police surgeon testified that hyoscine is a drug used many times by him to depress and sedatize drug addicts, as well as people of psychopathic tendency (R. B215). A sedative is a drug or medication utilized and given to quiet a person, settle his nerves or put him to sleep (R. B224-5). Phenobarbital is also a sedative and, because a barbiturate, too, it is also an anodyne or pain-deadener (R. B225-6). However, in this case he considered it the sedative, while hyoscine principally the anodyne (R. B225-6).

He had examined about 20,000 narcotics addicts in his experience, about 70% of those on heroin (R. B217-8), and had treated about 6-7,000 cases of narcotics withdrawal (R. B218). And in about 50% of that number had used the same injection and treatment he administered to petitioner (R. B218, D1010).

Acute withdrawal symptoms, he testified, include complaints about pain in the abdominal area usually, of sickness, weakness, and an inability to remain emotionally still.

The patient is restless, talkative, moist perspiration usually covers his face and body and in severe cases he will vomit on the least provocation. He cannot keep water down, nor take food—in fact, he will refuse food, except sweets like candy or chocolate—and he desires quiet. He suffers spells of quietude and sleep, then wakefulness with hilarious screams and yelps (R. D1017-8).

The phenobarbital, based on his experience, combines very well with hyoscine in the proportion and quantity used to quiet the addict, to pacify his mind, to delay emotions of hilarity, noisiness and excitation (R. B215-6), without putting him to sleep (R. B215-6, B228). The addict in withdrawal is suffering from a nervous reaction (R. B247), and the small amount of phenobarbital injection counteracts the activity of the sympathetic nerves, expecially in the abdominal area (R. B243), while the hyoscine relaxes (R. B226-7). The combination given rests and relaxes the subject (R. B227, B243, D1019).

He could recall no case in his experiences where his use of the drug hyoscine produced amnesia or loss of memory and considered that the injection used on Townsend, alone or together with the sodium phenobarbital tablets for oral administration, could not have resulted in loss or lapse of memory in the case of petitioner or have impaired his vision or otherwise adversely affected his mental condition to the point of depriving him of his will or putting him to sleep, and denied using the drugs for that purpose (R. B216, B218-20, B228, B231-2, D982-3, D1001, D1010). He used the injection and treatment in question because petitioner was tense and firm (R. B226). In order to sedatize completely and narcotize petitioner he would have to have administered 3 or 4 grains of phenobarbital (R. B233) or a 1/8 grain of hyoscine (R. D988-90), or 1½ to 2 grains pheno to put him to sleep (R. B243). To create amnesia would require 1/100 of a grain of hyoscine, to so-called normal

dose, plus another 1/60 of a grain of hyoscine, or a large dose of phenobarbital and hyoscine combined (R. D1008-9).

On cross-examination during the preliminary hearing, the colloquy ran as follows at one point (R. B228):

Q. You gave him something that would knock him out?

A. No, sir.

Q. Doctor, you testified before, in a case where this man was being tried?

A. Yes.

Q. Did you give him any truth serum or anything—

A. No.

Q. —that you considered that?

A. No.

Q. You never told anybody you did that?

A. I never saw any in my life.

When Dr. Mansfield, the police surgeon, next saw petitioner on Sunday evening, January 3, Townsend said, "that medicine I gave him the other night didn't help him any." (R. B221.)

Dr. Harry R. Hoffman, also a physician licensed to practice in Illinois, since 1910 (R. D1154-5), and a specialist in nervous and mental diseases who in 1931-41 organized the behavior clinic of the criminal court of Cook County, and presently on the staff of the clinic (R. D1156-7), testified for the prosecution on the trial in rebuttal and stated that he had treated hundreds of narcotics addicts and used hyoscine in his practice many hundreds of times, as well as phenobarbital, many thousands of times (R. D1157-8). He has observed no case where hyoscine in normal dosage caused amnesia (R. D1159). Further giving his opinion upon the hypothetical person posed (*i.e.*, Townsend for effects and purposes), he stated the injection in question could not have caused amnesia, nor put the subject to sleep (R. D1160-65). He referred to an old text, Lambert Towns Treatment of

Drug Addicts, which advocates use of hyoscine (R. D1168). He himself has never used hyoscine in narcotics cases (R. D1167-8). He considered the drug's effects upon a confirmed narcotics addict would be less pronounced than upon a normal individual (R. D1172), although a similarity of symptoms, *e.g.*, dryness of mouth, some difficulty in accommodating in vision, depending on the amount given (R. D1169).

On further cross-examination, the following colloquy occurred, with reference to the doctor's early use of hyoscine in treating palsy patients while a student at Rush Medical College and while working in the out-patient clinic (R. D1173):

Q. What do you give it to palsy patients for?
A. It has an effect on involuntary movements of the individuals.
Q. Now, doesn't hyoscine also create twilight sleep, Doctor?
A. In conjunction with morphine scopolamine, or hyoscine and morphine, twilight sleep, yes, sir.
Q. Well, what does that word mean?
A. Scopolamine or hyoscine are the same.
Q. Scopolamine is hyoscine?
A. Yes, sir.

Then, again, counsel for defendant read to the doctor from a text to which the police surgeon had referred, as follows, concerning the drug "Hyoscine (scopolamine) • • • There is possibility of narcosis [sleep] • • • the blunting of memory for recent events is a unique characteristic of the drug. • • • Habitual use, • • • may lead to mental deterioration and disorientation.

"The average adult does of hyoscine is 1/200 to 1/100 grain • • • ." (R. D1176.)

Testifying on behalf of petitioner, both during the preliminary hearing and upon the trial, was Dr. Charles D.

Proctor, not a licensed physician, but possessing a doctorate in pharmacology and toxicology (R. B495-9). At the time of the trial, he was an assistant professor in pharmacology, chemotherapy and toxicology at Loyola University Medical School (R. C498). He has worked for the Cook county coroner's office, with and for doctors, and at the Cook County Hospital (R. C504). He testified that he is acquainted with the drugs hyoscine and phenobarbital (R. C499-C500), and acquainted with leading and recognized pharmacological and toxicological and other related medical texts on therapeutics, physiology, and so on (R. C506-7). He admitted that he has never prescribed treatment for drug addition and has never observed the effect of hyoscine on human beings, his experience being virtually alone, if not solely, upon text book materials (R. C564-6).

He considered the normal range of hyoscine drug injection between .25 and .3 milligrams, translating 1/100 grains hyoscine to .6 mgs. and 1/200 to .3 mgs. from the apothecary to the metric (R. D1090-2). He considered the administration here, that of a fraction less than .29 mgs. well within the normal range (R. D1092). He considered the ½ grain phenobarbital given hypodermically a very low sedative dose, and further considered ¼ grains very low (R. D1093). The normal dose of phenobarbital for sedative effect he placed at 45 mgs.—60 mgs., and 60-90 mgs. for hypnotic or sleep-producing effects, whether administered orally or hypodermically, taking ½ grains of phenobarbital to equal 30 mgs. (R. D1090-1).

Hyoscine, in his opinion, exaggerates three symptoms of the narcotic addict's withdrawal stage—restlessness, prostration and excitation. The disorientation of the addict would be increased, affecting consciousness and memory within a wide range, from zero to all (R. C506-7, C575, D1087, D1094). Within this wide range, it accordingly produces no or severe amnesia or memory loss as to details

and events occurring during the period of the effects of hyoscine (R. C506-7, C537-8, C552-3, C580). There would also be effected an impairment of the person's consciousness, ability to reason and vision (R. C537-40, C542-3, D1087, D1089, D1118-22). In its possible effect on the central nervous system, as a depressant, hyoscine could effect results ranging from absolute sleep, preceded by apathy and drowsiness, on the one hand, to complete disorientation and excitation and prostration and restlessness, on the other (R. C536, D1118-22). The duration of amnesia would be the same for an addict as for a normal person, however (R. D1094).

Phenobarbital, another depressant, would add to and exaggerate the depressive effect of the hyoscine (R. 537), and, indirectly, affects further the subject's consciousness (R. D1089).

The effects of hyoscine on the subject's vision are described in terms of paralysis of the nerves, enervated sphincter muscles of the iris and of the ciliary muscle in eye lens, producing pupil dilations, cycloplegia, or loss of the ability to accommodate vision, so that the subject sees better objects at a distance than close-up (R. C537-8, 568). This impairment of vision ordinarily should last 4-6 hours (R. C542), and all of the effects from hyoscine relating to amnesia, and so on, should last from 5-8 hours (R. C538-40, C533-4, D1089, D1124).

Concerning the hypothetical case posed, and based on an injection of hyoscine of .3 mgs., a slight fraction more than the .289 mgs., or 1/230 grains, used, under all of the circumstances used, Dr. Proctor's expert opinion was that the total drug injection and treatment resulted in impairment of the hypothetical person's ability to reason, vision; it increased disorientation and restlessness and anxiety and excitation and prostration; and he suffered memory loss or amnesia and partial consciousness (R. C506-7,

D1119-21, D1125). However, he could not really state to what extent these symptoms or results operated here. He further based much of his testimony on the premise that the drug injection here operated at the first stage of the narcotics withdrawal symptoms or syndrome, which he estimated usually manifests itself 10-12 hours following the last narcotics injection (R. C535-6, C581).

During the course of his direct testimony, petitioner's counsel asked his own witness the following question (R. C541): "Mr. Branion: Q. 'Doctor, is hyoscine a drug that is given to pregnant women who are about to have a baby, to induce twilight sleep?'" and the expert answered, "Yes," which was later stricken for reasons not here pertinent.

F.

SUMMARY OF ARGUMENT.

Prior to empanelling the jury, the defendant claimed that the written confession in the possession of the People was drug induced, and, therefore, involuntary (R. B85). Historically, in Illinois, involuntary confessions cannot be admitted into evidence. *People* v. *Vinci*, 295 Ill. 419, 425. The use of such confessions fatally infects a trial as a denial of due process under state and federal constitutional standards. *People* v. *Miller*, 13 Ill. 2d 84, 91, *cert.* den. 28 U. S. L. W. 3377; *People* v. *Townsend*, 11 Ill. 2d 30, 38; *Spano* v. *New York*, 360 U. S. 315; *Leyra* v. *Denno*, 347 U. S. 556.

Procedurally in Illinois, the character of a confession "is a preliminary question which must be decided by the trial court from evidence heard outside the presence of the jury * * *" (13 Ill. 2d at 96). The inquiry is not confined to evidence of threats or promises, "but whether there has been any threat or promise of such a nature that a prisoner would be likely to tell an untruth from fear or threat or hope of profit from the promise" (*id.*).

That preliminary hearing was held in this case outside the presence of the jury, on the defendant's motion to suppress the confession (R. B91 to C597). This included testimony of the defendant and of a graduate pharmacist in support of the motion (R. B91-205; C495-586). The Court concluded that the confession of January 1, given to an Assistant State's Attorney, about 10:10 P.M. (R. B450) and taken down by a qualified reporter, who transcribed it in four typewritten pages (R. B444), was voluntary (R. C586) and was so when defendant signed it fourteen hours

later, on January 2, about 1:00 P.M., after it was read to him, while he followed the reading from a copy of it (R. B442-43).

That determination, however, left the weight accorded to the confession, for the jury. Thus, the testimony of the preliminary hearing had to be repeated for the jury (R. C643 to C743; C921 to D1080; D1154 to D1181). The defendant and Dr. Proctor, the pharmacist, testified for the defense before the jury (R. C801 to C920 and D1082 to D1147). It was the judge of the credibility of the witnesses, and of the weight to be given to the confession. The jury was charged with the responsibility whether to accept all or a part of the confession, and to allocate to it its measure of proof of the crime. *People* v. *Guido*, 321 Ill. 397, 420; *People* v. *Townsend*, 13 Ill. 2d 30, 45. And, to date this court has expressly left the resolution of this fact question to the superior opportunity of court and jury to observe demeanor and to detect the nuances which invite credibility or which question candor. *Thomas* v. *Arizona*, 356 U. S. 390, 402; *Watts* v. *Indiana*, 338 U. S. 49, 51-52.

In this case the overwhelming persuasion of the record supports the arrest, the interrogation, the routine medical treatment requested and obtained, the lapse of time between giving the confession and the signing of it, together with the subsequent (January 4), voluntary corroborative confession in public, to the coroner's jury.

Weighted against this valid, objective record is the uncorroborated testimony of defendant, in any detail, together with the unrelated testimony of the graduate pharmacist in the pharmacopeia of hyoscine-scopolomine, without qualified reference to the effect of this injection on this defendant, or of its effect on any person. Significant in this testimony is its parallel to standard texts, which speak of "doses", whereas here the injection was "less than a

and, was administered, non-intravenously, in a solution which included an ¼ grain of phenobarbital.

, the constitutional question is:

this injection, (a) as an independent physical fact, on the subjective record here, deprive the defend- the use of his will, to extract a confession he would ve given otherwise, regardless of its truth or falsity, y depriving him of due process?

onstitutional questions that is *not* presented here

a drug induced confession deprive the defendant right to due process? This latter question was not below by these respondents, and they, as do the e of the State of Illinois, here and now reject its stion in this Court.

e defendant accuses the physician who treated him, of ignorance, or of deliberate prevarication. His au- y for these epithets in this record is his own testi- , and the academic testimony of the graduate pharma- In addition, he has offered the post trial affidavit of sician, who professes no knowledge of the facts in ase relative to defendant's condition.

wever, that affiant fails to appraise as proper or im- er, the medical treatment given to petitioner.

r does the plea of the *lex naturalis* and papal inter- ation of it in condemning drug induced confessions, ge the nature of the issue here. The People of the e of Illinois did not use a drug induced confession, and ot expouse its use anywhere. Moreover, this Court is cord that involuntary confessions, are "offensive to vilized community's sense of fair play, decency and ce," before the late Holy Father spoke.

G.

ARGUMENT.

I.

The Record of the Trial of the Defendant in the State Court on His Indictment Proves That He Was Accorded Full Due Process, and, This Objective Fact Cannot Be Dissipated by the Petitioner's Procedural Maneuvers Subsequent to Trial.

The defendant has chosen to base his argument on the record as rewritten by him in his petition in the court below, and in his Application in this Court (p. 3). The device used is: (a) quotation marks; (b) three dots; (c) the quotation: admit the factual allegations of the petition well pleaded; (d) three dots; and, (e) quotation marks. The device is homemade. Defendant constructed it wholly from the respondents' answer to the rule to show cause why a writ of *habeas corpus* should not issue. In pertinent part, that pleading reads, as follows:

> "Respondents admit the factual allegations of the petition well pleaded, but deny that Petitioner is held in custody by respondents in violation of the constitution or laws of the United States, but aver the fact to be that Petitioner is in the lawful custody of Respondents by virtue of a valid judgment of conviction entered on April 7, 1955, as further alleged more particularly in the petition." (Par. 1, R. A28.)

Thus, the defendant must, of necessity, in this Court ignore the denial of the respondents that the trial of the defendant violated due process in the federal constitution sense. By ignoring the denial defendant may then use a rewritten record, in large measure *de hors* his trial record.

But, due process is an objective fact and not a procedurally maneuvered advantage.

The measure of the validity of defendant's conviction for the crime charged lies in the record of his trial. The measure of the validity of defendant's conviction for the crime charged, within the jurisdictional inquiry of this Court, is whether a written confession introduced into the trial in the State Court was drug-induced and, therefore, involuntary. If so, the defendant was denied due process. *People* v. *Townsend*, 11 Ill. 2d 30, 38; *Spano* v. *New York*, 360 U. S. 315; *Leyra* v. *Denno*, 347 U. S. 556.

The record of defendant's trial must, therefore, to support his conviction, show that he did not give an involuntary confession, which fatally infected his trial. The respondents respectfully submit to this Court that the trial record clearly negatives this impediment by proving the voluntary character of his confession.

The record facts which support this (and the defendant's) conviction are:

The defendant testified that he had injected himself with narcotics by means of a hypodermic needle at midnight, December 31-January 1, 1953-54 (R. B93, C810). He said, he was arrested about an hour and forty-five minutes later (R. B93). The records of the local police station show that he was received at 2:30 A. M. (R. B252). At that time the receiving officer made out an arrest slip from information furnished by defendant, who was then neatly dressed and who spoke very clearly (R. B253). This took between five and ten minutes (*id.*).

The arresting officers (defendant says there were four: Cagney and Fitzgerald, two of them) (R. B94), then took him to the interrogation room. The interrogation lasted, according to defendant from "ten minutes to 2:00, * * *, till about 4:00 or 5:00 that morning" (R. B97). It lasted

according to the officers "between thirty and thirty-five minutes," (R. B254) "from 2:45 to 3:15 A. M." (R. B281) "about half an hour" (R. B333) and "about twenty-five or thirty minutes" (R. C648).

He was placed in the women's cell, by himself, when he was transferred to another station. Without dispute he remained there, undisturbed, until 8:30 P. M., January 1, 1954 (R. B99).

He was then taken back to the original police station by two squadrol policemen at "about 8:25, 8:30" (R. B271). He was one of four men to participate in a show up (R. B102). He was not interrogated "before 9:00 o'clock that night" (R. B99). The showup was held "a few minutes" after 8:15 P. M. (R. B292); between 8:30 and 8:45 P. M. (R. B346, B347, B349), fifteen or twenty minutes after 8:25 or 8:30 (R. B421 and B423), and; fifteen minutes after 8:30 (R. B477, B478).

Immediately after the show up, while the four participants were still together the defendant and another engaged in a brawl (R. B355, B426-28; C704-05 and C826-27). The defendant was not injured (R. B357).

"Shortly before 9.00 o'clock, 9:00 P. M." (R. C648), the defendant in the presence of the four arresting officers he admitted striking and robbing the deceased, for which he was here convicted (R. C649). It was during this period that he complained of pains in his stomach, and the doctor was called (R. B358-59).

The Assistant State's Attorney arrived between 9:15 and 9:30 P. M. (R. B446). The doctor had by this time been summoned by the police (R. B447) and the Assistant State's Attorney did not question the defendant but waited for the doctor to arrive (R. B449). The Assistant State's Attorney did not see the doctor at any time during his visit to the police station.

According to the Assistant State's Attorney, the doctor arrived and treated the defendant between 9:35 and ten minutes after 10 (R. B449). When the Assistant saw the defendant about ten minutes after 10, he asked him how he felt and the defendant said "he felt much better" (R. B450). The assistant did not of course have any knowledge of the treatment given the defendant by the doctor (R. B451-452).

The defendant, in his confession, stated that he had at 6 P. M. on December 18, 1953 (R. C740), hit a man on the head with a house brick in the passageway between two buildings and that he took a wallet from the pocket of the man and threw it in the hallway near an alley on 37th Street (R. C742). There was no information given to the police prior to this statement that there was a wallet taken and that it was thrown in the hallway near an alley on 37th Street. This part of the confession is corroborated by the testimony of the boy who found the wallet in the hallway at 117 East 37th Place on the 19th of December, 1953 (R. C631). And, is further corroborated by the testimony of the wife of the decedent that she saw the wallet which belonged to her deceased husband on December 19, 1953, when it was brought to her home (R. C621).

The defendant was taken to the State's Attorney's Office January 2, about 1 o'clock (R. B307) where he met the Assistant State's Attorney who had taken the statement the night before (R. B441). The statement, which the defendant had given the night before, was then read to him (R. B442). After it had been read to him "he signed each and every page of it and he put his initials up on top with reference to the case it involved" (R. B443). The Assistant then identified the signature, "Charles Townsend" (R. B444).

Subsequently, on January 4, 1954, he testified at the cor-

ouer's inquest, at an open hearing at which his sister was present. Under oath, after being advised of his constitutional right against self-incrimination, he again confessed to the Boone murder (R. B143-8, B178-81, B184, B316-7, B380-1, B383-5, B433-5, B445, B488, C692, C905).

A.

The defendant argues that the district court erred in not holding a full hearing, independent of the state court trial record, on the voluntary character of the confession. Contrary to his allegation the voluntary character of the confession was fully tried in the State Court. Moreover, an independent hearing was not necessary in the district court in the absence of a vital flaw or unusual circumstances which would warrant a hearing *de novo*.

This latter proposition is the gravamen of the decision in *Brown* v. *Allen*, 344 U. S. 443, 463-65, 506. In the concurring opinion Mr. Justice Reed said in this connection:

> "* * * Although they have the power, it is not necessary for federal courts to hold hearings on the merits, facts or law a second time when satisfied that federal constitutional rights have been protected. It is necessary to exercise jurisdiction to the extent of determining by examination of the record whether or not a hearing would serve the ends of justice. *Cf.* 28 U. S. C. sec. 2244. * * * As the state and federal courts have the same responsibilities to protect persons from violation of their constitutional rights, we conclude that a federal district court may decline, without a rehearing of the facts, to award a writ of habeas corpus to a state prisoner where the legality of such detention has been determined, on the facts presented, by the highest state court with jurisdiction, whether through affirmance of the judgment on appeal or denial of post-conviction remedies. See *White* v. *Ragen*, 324 U. S. 760, 764."

See also *Thomas* v. *Arizona*, 356 U. S. 390, where Mr. Justice Clark, writing for a majority of the court, said (403):

> "Petitioner has an alternative prayer that his case be remanded to the District Court for a plenary hearing on the issue of coercion. There is no merit, however, to his contention that the District Court erred in denying the writ on the basis of the record without a full hearing. The granting of a hearing is within the discretion of the District Court, *Brown* v. *Allen*, 344 U. S. 443, 463-465 (1953), and no abuse of that discretion appears here."

Accord: *United States ex rel. Gaeron* v. *Ragen*, 7 Cir. 1954, 211 F. 2d 902, 904; *Bailey* v. *Smyth*, 4 Cir. 1955, 220 F. 2d 954, 955-6, cert. den. 350 U. S. 915; *United States ex rel. Goodchild, Jr.* v. *Burke*, 7 Cir. 1957, 245 F. 2d 88, 91, cert. den. 355 U. S. 915; *United States ex rel. Wade* v. *Jackson*, 2 Cir. 1958, 256 F. 2d 7, 9; cert. den. 357 U. S. 908.

Citing *Brown* v. *Allen*, 344 U. S. 443, 463-5, 506, and *Rogers* v. *Richmond*, 357 U. S. 220, the Supreme Court of the United States in *United States ex rel. Jennings* v. *Ragen*, 358 U. S. 276 (1959) said (277):

> "The state responded to petitioner's application and urged dismissal. The District Court, on a record limited to the aforementioned documents [*i.e.*, the petition, with 'various documents' appended, 'including an opinion of the Supreme Court of Illinois affirming his conviction and simultaneously affirming the denial to him of post-conviction remedies'] augmented by a 'report prepared by an *amicus curiae* appointed by it, dismissed the application without a hearing. * * *'
>
> "It appears from the record before us that the District Court dismissed petitioner's application without making any examination of the record of proceedings in the state courts, and instead simply relied on the facts and conclusions stated in the opinion of the Supreme Court of Illinois. We think the District Court erred in dismissing this petition without first satisfy-

ing itself, by an appropriate examination of the state court record, that this was a proper case for the dismissal of petitioner's application without a hearing, * * *."

This Court in the *Jennings* case, it should perhaps be noted, first observed that "[h]is petition contained allegations, primarily concerning the introduction into evidence at his trial of a confession coerced by physical mistreatment by police officers, which if true would entitle him to relief. * * *" (*ibid.* 276.) This implicitly reinforces and grants currency to the statements of the court, and of the concurring opinion of Mr. Justice Frankfurter, in *Brown* v. *Allen*, that some applications upon their face may be dismissed, without more, where if taken as true they show no violation of a substantial federal right. (344 U. S. 463, 506). And see also *United States ex rel. Rogers* v. *Richmond*, 2 Cir., 252 F. 2d 807, 809.

Respondents have never contended that the petition on its face, without more deserves dismissal; rather, they have argued the point only within the context of the findings of the Supreme Court of Illinois, by its reported opinion and its post-conviction memorandum, underscored only the proposition that the synonymous identity of hyoscine and scopolamine were unknown to petitioner, his counsel and the trial judge upon the preliminary hearing of the admissibility of petitioner's confessions.

Besides buttressing our theory, the *Richmond* case mediately cited above is further noteworthy for several reasons. The state appealed to the court of appeals from an order of the district court vacating petitioner's sentence. It appeared that the district judge conducted a hearing *de novo* and, at the same time, had before him only a portion of the record of petitioner's state court proceedings. Even this incomplete record, presented to him by the state upon motion, he refused to entertain or consider. In hold-

ing that the district judge's failure to call for the complete state court record, or for so much thereof as related to the question of the admissibility of the confessions, constituted an abuse of discretion and required reversal and remandment for that purpose (252 F. 2d 810-11), the court made the following additional statements and observations (809):

> But for the case of *Cranor* v. *Gonzales*, 9 Cir., 226 F. 2d 83, certiorari denied 350 U. S. 935, • • • which we shall presently show to be distinguishable, the instant case is the first *habeas corpus* proceeding since the leading case of *Brown* v. *Allen* • • • in which the District Court held a hearing *de novo* and the propriety of his doing so was challenged on appeal. • • •

The court went on to note that nothing in the incomplete record of state court proceedings before it "discloses such a 'vital flaw' in the State court proceedings or any such 'unusual circumstances,' as those terms are used in *Brown* v. *Allen*, as would warrant the federal court in holding a hearing *de novo* on the issue of the admissibility of the confessions. • • •" 252 F. 2d 810-11.

The court then continued (811):

> We conclude therefore, that on remand the judge below should take such steps as will assure him that he has in evidence not only the findings of the trial court as to the admissibility of the confessions but also the transcript of the preliminary hearing on which the trial findings were based. Unless the judge below shall find in the record thus before him material which he deems to constitute "vital flaws" and "unusual circumstances" within the meaning of *Brown* v. *Allen*, we hold that he should make the necessary constitutional determinations exclusively on the basis of the historical facts as found by the State trial court. *Brown* v. *Allen*, 344 U. S. at pages 507-508, • • •.

This Court, in denying *certiorari*, said: "• • • We read

the opinion of the Court of Appeals as holding that while the District Judge may, unless he finds a vital flaw in the State Court proceedings, accept the determination in such proceedings, he need not deem such determination binding, and may take testimony. See *Brown* v. *Allen*, 344 U. S. 443, 506, *et seq.*" *Rogers* v. *Richmond*, *Warden*, 357 U. S. 220 (1958).

Respondents submit that the District Court, upon the mandate of this Court, proceeded to determine the constitutional issue with reference, first, to the records of the state court proceedings involving the defendant here and then only, if it deemed it advisable or necessary, take testimony. The state court records neither were before the district court initially nor before this Court on *certiorari* in this proceeding. Accordingly, this could not reasonably have intended to compel the district court to proceed—without more and where it has never viewed the record of state proceedings—to a full hearing without an opportunity given that court to exercise intelligently its discretionary power to deny or order a full hearing. Nor could this Court have acted to substitute its determination for that of the district court without at the same time acting upon the complete record of state court proceedings, not before it. This Court decided only that the petition was one that could not validly be dismissed by any court without prior reference to and an independent determination by it of the law applicable and facts undisputed upon the complete records of state court proceedings affecting the petitioner and his constitutional claim. Respondents having filed the records in this cause, the district court made the determination. That determination, respondents further submit, reasonably concluded in the court's denial of defendant's prayer for a full hearing and dismissal of his petition.

B.

In support of the allegations of his petition defendant has attached thereto as Exhibit "A" the affidavit of Dr. Nathaniel O. Calloway of Chicago, "an experienced expert in the field of internal medicine" (R. A45). After setting forth his qualifications, this affiant recites that he "has obtained special knowledge of the human physiological and psychological effects of certain drugs," and "has made a study of the effect of certain drugs upon persons who are addicted to narcotics." (*id.*) Further, he claims "special knowledge of the pharmacological characteristics of a certain drug known as hyoscine, or commonly known as scopolamine, or 'the truth serum.'" Again, he avers that from specifically enumerated and authoritatively recognized pharmacological texts he "has obtained personal [*sic*] knowledge of the fact that the drug hyoscine is identical with and the same drug as scopolamine," that they "are different names for the same drug," and concludes: "From professional experience, Affiant is of the view that without regard to the purpose for which either * * * is used, the physiological and psychological effect is the same, that is, the production of a state of mind that renders the subject injected with [them] susceptible to interrogation that produces confessions and incriminatory admissions." (*id.*) The affidavit thus is general in form without particularization respecting the circumstances at issue as to either the quantity required to produce the alleged effects, or as to the manner or mode of its assimilation by the particular petitioner, whether orally, intravenously or intramuscularly, or physical locus if injected, or otherwise.

The good doctor neglects to allude to the use of hyoscine or scopolamine as either proper or improper medical administration or treatment in cases of acute narcotics with-

drawal under the circumstances in question, as on the other hand defendant has asserted constitutes an improper use, and has avoided reference even to the question whether if considered improper or not recommended today by the weight of medical opinion, it was held proper in quondam times and is not seriously objectionable according to current consensus. For the sake of argument, however, let us assume its propriety when administered. Still all of the problems that arise in this case are not resolved satisfactorily if in fact, as Dr. Calloway avers, the drug is productive of a mental state conducive to the solicitation and elicitation of confessions without regard to the purpose for which used. Initial inquiry, accordingly, would appear to be directed toward the questions, What was petitioner's mental state following administration of hyoscine under the circumstances in question? and, Was the confession made by petitioner while in that mental state a product of his mental freedom?

No conviction of a defendant by a state court upon the basis of a coerced or involuntary confession, not the result of the defendant's exercise of free will, can withstand or survive challenge under the Fourteenth Amendment of our federal Constitution. It is "constitutionally obnoxious" not alone because of [the confession's] unreliability, Frankfurter, *J.*, in *Rochin* v. *California*, 342 U. S. 165, 173 (1952), it is offensive to a civilized community's sense of fair play, decency, and of justice, *ibid.*, and *Lyons* v. *Oklahoma*, 322 U. S. 596, 605 (1944). The accusatorial system, as opposed to the inquisitorial even with judicial safeguards, is basic to liberties and rights safeguarded by the federal due process clause. Frankfurter, *J.*, in *Watts* v. *Indiana*, 338 U. S. 49, 54, 55.

Federal *habeas corpus* is limited in scope by the sole inquiry whether any of petitioner's federal constitutional rights have been violated. (*United States ex rel. Sieg* v.

Ragen, 7 Cir. 1957, 247 F. 2d 638, 639, *cert.* den. 355 U. S. 900.) The federal courts and state courts have the same responsibilities to protect persons from violations of their federal constitutional rights. (*Brown* v. *Allen*, 344 U. S. 443, 465 (1953); *United States ex rel. Gaweron* v. *Ragen*, 7 Cir. 1954, 211 F. 2d 902, 904.) It is considered policy that the jurisdiction of a federal court to interfere with the proceedings of state governmental bodies charged with the prosecution and punishment of offenders against state laws is an exceedingly delicate one to be exercised with the greatest of care and nicest sense of propriety. (*United States ex rel. Sieg* v. *Ragen*, 7 Cir. 1957, 247 F. 2d 638, 639, *cert.* den. 355 U. S. 900.) This does not, however, on the undisputed facts in the record of the state court proceedings, detract from the powers and duties of a federal court to make its own independent determination whether there has been a violation of the due process clause by the introduction of an involuntary confession. *Malinski* v. *New York*, 324 U. S. 401, 404.

A district court is justified in dismissing a petition without a hearing if upon his examination of the state court record it is persuaded that the state courts have given fair consideration to the federal constitutional questions presented. (*Bailey* v. *Smyth*, 4 Cir. 1955, 220 F. 2d 954, 955-6, *cert.* den. 350 U. S. 915; *United States ex rel. Goodchild, Jr.* v. *Burke*, 7 Cir. 1957, 245 F. 2d 88, 91, *cert.* den. 355 U. S. 915.) Federal *habeas corpus* ought not to be accorded the status of an appeal, where state appellate processes have been exhausted and petitioner, now with different counsel, seeks to relitigate disputed questions of fact presented to and determined against him by the state courts. (Frankfurter, *J.*, in *Brown* v. *Allen*, 344 U. S. 443, 503 (1953); *Palakiko* v. *Harper*, 9 Cir. 1953, 209 F. 2d 75, 80-2, *cert.* den. 347 U. S. 956.) It is only where the records of the state court proceedings disclose unusual circum-

stances or a vital flaw—as where, for example, there is pointed up a denial of a federally safeguarded right upon uncontroverted and undisputed facts in the state court record, *Wiggins* v. *Ragen*, 7 Cir. 1956, 238 F. 2d 309, 312, 313, 314, and *United States ex rel. Wade* v. *Jackson*, 2 Cir. 1958, 256 F. 2d 7, 9, *cert.* den. 357 U. S. 908—that the district court should entertain a full hearing and, if the denial remains clear, grant petitioner's prayers.

Aptly summarizing some of the foregoing principles, rules and considerations is the statement of this court in *Thomas* v. *Arizona*, 356 U. S. 390, 402 (1958):

> Whatever the merits of this dispute [*i.e.*, whether a state law enforcement official in fact did or did not make threatening statements to petitioner to induce a confession], our inquiry clearly is limited to a study of the *undisputed* portions of the record. "[T]here has been complete agreement that any conflict in testimony as to what actually led to a contested confession is not this Court's concern. Such conflict comes here authoritatively resolved [against petitioner] by the State's adjudication." *Watts* v. *Indiana*, 338 U. S. 49, 51-52 (1949). Time and again we have refused to consider disputed facts when determining the issue of coercion. See *Gallegos* v. *Nebraska*, 342 U. S. 55, 60-61 (1951); *Haley* v. *Ohio*, 332 U. S. 596, 597-598 (1948); *Ward* v. *Texas*, 316 U. S. 547 (1942). The rationale behind such exclusion, of course, lies in the superior opportunity of trial court and jury to observe the witnesses and weigh the fleeting intangibles which may indicate truth or falsehood. We abide by the wisdom of that reasoning.

See also: *Brown* v. *Allen*, 344 U. S. 443, 458 (1953); *Leyra* v. *Denno*, 347 U. S. 556, 559-60 (1954).

C.

Arguendo, however, and assuming that petitioner had not his full capacities and mental freedom when on Friday, between 11:15-11:30 p. m., January 1, he gave his stenographically recorded oral confession, the record discloses a disputed fact question whether he had previously orally confessed to the arresting police officers, about 9:00 p. m. (R. B649), and the facts that on Saturday afternoon, January 2, sometime between 1:30-3:00 p. m., he signed a transcription of the oral confessional stenographically recorded the previous night, about 14 hours earlier (R. B419), and much later, Monday, January 4, again confessed at the coroner's inquest (R. B472).

The record evidence discloses, and the Supreme Court of Illinois stated, that by the testimony of petitioner's own expert witness the effects of the drugs in question could not have lasted beyond 5-8 hours (R. C538-40). (See, also, 11 Ill. 2d 37, 41.) So at best, viewing the facts most favorably to petitioner, it was disputed whether as a result of his mental confusion, police threats and pressure, and so on, he voluntarily signed his confession and later confessed at the coroner's inquest.

The jury was instructed by the court that the alleged oral confession given about 9:00 p. m. Friday, January 1, because verbally given and not otherwise recorded except by memory, should be considered cautiously, etc. (R. D1274-5). Otherwise, the jury was instructed with reference to the defendant's state of mind as affected in any way by the administration of drugs when he gave his confession again later that Friday evening that they might disregard the confession (*id.*, 1271). Similarly, with respect to threats, promises or physical brutality or duress or other coercion, they were instructed with regard to that confession, generally (*id.*, 1271), and specifically (*id.*, 1272);

as with regard to all confessions in the case and the weight to be given them (*id.*, 1272-3, 1281), inclusive of that given at the coroner's inquest (*id.*, 1276).

Now, to emphasize a point already indicated, the trial judge did not instruct the jury to return a verdict of not guilty if they found the stenographically recorded confession of Friday night to have been involuntarily given. It merely instructed the jury to disregard it in that event, on the theory apparently that if disregarded there would still be sufficient competent evidence before the jury which, if believed, would sustain a guilty verdict.

Next, and of equal importance is the fact that at no time, either during the trial, on writ of error in the Supreme Court of Illinois, in his state post-conviction petition or in the instant *habeas corpus* proceeding, has defendant ever contended that he signed the confession at the state's attorney's office, after it was read to him in full, and confessed again at the coroner's inquest, while still under the influence of the drugs or because he had previously been induced to make a so-called drug-induced confession. In short, he has never contended that all confessions in evidence in this case were parts of "one continuous process" within the meaning and facts disclosed in *Leyra v. Denno*, 347 U. S. 556, 561 (1954). See also *Burwell v. Teets*, 9 Cir. 1957, 245 F. 2d 154, 162-3, and *Lyons v. Oklahoma*, 322 U. S. 596, 597, 604-5 (1944).

II.

Consideration of the Defendant's Constitutional Claims:

A. The defendant argues that the police surgeon either was ignorant or a prevaricator stating that he did not give the defendant truth serum (App. p. 9). The challenge to the doctor's lack of knowledge is basically immaterial, since he did, in the undisputed facts in this case, give the

defendant as accepted treatment for narcotics withdrawal, which he had administered to more than 3500 patients over a period of some 14 years. The doctor was a general practitioner, and whether he knew that this drug was capable of its so-called truth producing propensities, it is undisputed in the record that he had ever had occasion to recognize it as such to use it as such, or that he had in any way recognized that the 'ministrative dose given this defendant would in any way react along those lines. Nor, could the doctor properly be termed a liar on the basis of the record here, since his unqualified testimony on cross-examination that he did not give the defendant "any truth serum or anything—that you consider that" (R. B228). Since the question is directed to the doctor's appraisal of what he administered to the defendant, under the conditions which it was administered, for the purpose for which it was considered, the record is undisputed that the doctor was telling the truth.

B. In his application here (p. 9) the defendant has cited catch phrases or scare words from pharmaceutical documents. The scare words used are "delirium" and "poisonous". Since the cautionary excerpt quoted refers to exceptions rather than rules, the testimony of the effect of the treatment given the defendant was one of credibility. There is nothing in this record to indicate that the defendant was poisoned. Thus, the fact that he was given an injection of a drug in a quantity of a solution, and in conjunction with another drug, which did not poison him, the suggestion is no more pertinent here than would the allegation that an overdose of aspirin would be fatally poisonous to a child.

Reference to the *Dispensatory of the United States* again shows that in doses large enough, or in people susceptible to it, the drug undiluted has a toxic and intoxicating effect upon given individuals. This again reduces the defend-

ant's case to the record before the jury in the trial on the indictment, and the evidence supporting the jury's weighing the credibility of witnesses to support its verdict.

With regard to defendant's citation of *Modern Drug Encyclopedia and Therapeutic Index* at page 437, hyoscine-scopolamine is listed as a medication for drug and alcohol withdrawal.

From the foregoing, it is readily apparent that the defendant does not have either testimony or authoritative scientific support for his charge that the treatment given him produced a mental state whereby he was forced to give an involuntary confession of a crime.

C. (1) Modern Drug Encyclopedia and Therapeutic Index, 7th Ed., Drug Pub., Inc., 1958, is edited by Dr. E. P. Jordan of the University of Virginia Medical School. The petitioner "relies upon" the prior edition of this index (App. p. 9). In the foreword to the latest edition (*id.*, iii) the editor says: "The purpose and contents • • • are well known."—In order to determine both, reference is made to the first edition (1934, Am. Journal of Surgery, Inc., New York). "This treatise is designed to meet the demand of the progressive physician for information concerning the most modern therapeutic agencies placed at his command • • •." (*id.* v.) Since Dr. Mansfield, the attending physician, had treated some 20,000 narcotic addicts (R. B217-18), and some 3,500 with this formula, he was undoubtedly familiar with the dosages of the Index, and the drug houses which made the pills.

The Index has identical verbatim texts for hyoscine hydrobromide (p. 555), and scopolamine hydrobromide (p. 1014). Two drug houses sell the preparation in tablets of 1/100 gr. (0.65 mg.) and in 1/200 gr. (0.32 mg.). Its recommended "Action and uses" among others is "in the withdrawal treatment of narcotic • • • addicts" (*id.*). The subcutaneous dosage "as a sedative" is "1/60 gr., or,

1/120 gr." *Again*, this petitioner was given 1/230 gr. in a sterile solution with ¼ gr. of phenobarbital (R. B214-15).

In a desperate use of the asterisk to stimulate imagination to supply that which the text cannot, the petitioner quotes from "The Dispensary of the United States of America, 25th Ed., Lippincott, Philadelphia, 1955, p. 122 • • •" (App. p. 9). The citation is in error. The article on Scopolamine hydrobromide runs from pp. 1221 to 1224. The petitioner's first excerpt is part of a sentence from p. 1222, and the second from p. 1223.

The first dissociated part sentence he quotes is preceded by one which says that scopolamine differs from atropine, "in that it is not stimulant to the medullary centers • • •; also, it frequently appears to act as a cerebral depressant and tends to promote sleep." Then follows petitioner's quote, followed by the rest of the sentence: "this effect may be observed in a patient in pain." (Compare the cautionary note pp. 555, 1014, in the Modern Drug Index and in Pharmacological Basis of Therapeutics with reference to pain.)

This sentence then follows: "A striking effect of *large doses* of scopolamine is the loss of memory for events which happened while the patient was under the influence of the drug." (Emphasis added.) *Again*, the injection given this petitioner was less than ½ a dose, 1/230 grain.

This text reports the use of this drug given "*intravenously* with pentobarbital sodium in labor." (Emphasis ours.) The dosage for active labor is 10 ml [Ed. Note 10 ml. = 10 cc's] of aqueous solution containing 250 mg (3¾ gr.) of pentobarbital sodium and 0.65 mg. (1/100 gr.) of scopolamine hydrobromide; • • •." (p. 1222.) This injection into the blood stream was to extend over a 3 minute period "until the patient becomes sleepy or incoherent."

Compare this apothecary for a woman in the throes of labor pains of 30 seconds duration at 4 minute intervals (*id.*), with the discomfort of withdrawal symptoms (R. D1017) in a man physically able to engage in a brawl an hour prior to treatment (R. B355, B426-28, C704-05, C826-27). Compare the intravenous, powerful dosage for intense labor against the subcutaneous injection into the petitioner which was approximately 1/5 the volume (2 cc's vs. 10 cc's); ½ gr. of phenobarbital vs. 3¾ gr. of pentobarbital, and, 1/230 gr. of scopolamine vs. 1/100 grain.

The Pharmacopoeia of the United States (App. p. 9) 16th Ed., October, 1960, Mack Pub. Co., Easton, Pa., for scopolamine hydrobromide, denominates the "usual dose—Subcutaneous, 0.6 mg." (p. 637.) The petitioner here was administered subcutaneously, .289 mgs., or 1/230 gr. (R. C506-07) "less than ½ dose" (R. D1092).

The Pharmacological Basis of Therapeutics, Goodman and Gilman, Macmillan, 1st Ed., 1941 (pp. 460-477) is cited by petitioner (App. p. 9). There is also a 2nd Ed., 1955, ch. 25 (pp. 541-559). The total effect of these articles is that the dosage given to this petitioner were proper medication, and safely within the amounts beyond which torpor or delirium may occur. As a matter of fact, all of these authorities belie delirium in the absence of pain.

Both these Goodman and Gilman editions carry one line, which is not suggested, intimated, implied or footnoted by any other text or index in the field. It is: "Scopolamine has also been employed to obtain criminal confessions." (1st ed., p. 472; 2nd ed., p. 554.) It is undocumented. It is at variance with its pharmacological text. It is unrelated to subject, to person and by analogy to any of the accompanying data.

It is, of course, unrelated to this petitioner. He was not by the unassailable portions of this record administered a

drug to extract a confession. Nor does he profess to such purpose. He testifies to disorientation, to torpor, to amnesia (R. B117 to B151). He claims text authority (App. p. 9) that scopolamine produces sleep "with low muttering delirium." He doesn't claim to have muttered, nor does he claim to have been poisoned or to have been delirious.

His real claim here is that he gave a confession, which for reasons subsequent, he now strives to repudiate. Whatever his basis for extricating himself from his present predicament, the least supportable claim is that the proper medication given to him at his request trapped him into a signed confession for a crime he didn't commit.

The state court trial record is to the contrary.

C. (2) The defendant cites a series of Law Review articles which he says have been uniformly critical of the reasoning of the Supreme Court of Illinois [in the Townsend decision] (pp. 10-11). An examination of these authorities does not support his argument. The Northwestern Law Review contains a student note which is prefaced by the following statement: "The unsigned and uninitialed contributions are written by students of Northwestern University School of Law. Publication does not imply agreement with the views expressed" (52 N. W. Law Rev. 665). Moreover, the note contains the following significant sentence with regard to applicability to the issue here.

> "The truth serums, however, do not consistently produce truth; instead, they yield a mixture of truth, fantasy, suggestion, and sometimes outright lies." (*id.* 670.)

In 24 Brooklyn Law Rev., 96, a non-student author distinguishes the case at bar from truth serum cases on the ground that it "illustrates the difference in the nature

of police actions when a drug is given for the purpose of providing medical relief" (*id.*, p. 108). It is basic in the case at bar that the record supporting the entire People's case is that this doctor was called for the purpose of treating the defendant, that he treated the defendant for relief of his distress, based upon a diagnosis without prior knowledge of the status of the defendant's incarceration and without informing the police or the State's Attorney of the nature of the treatment given to the defendant.

The other citations of learned documents and papal application of moral doctrines is based upon a subjective article by a graduate theologian. In *Narcointerrogation of a Criminal Suspect*, 50 Journal of Crim. Law and Criminology, 118-123, Father Sheedy writes a sympathetic article with special acknowledgement to the writer of the dissenting opinion of the Supreme Court of Illinois and with acknowledgment of the defendant's present attorney in this matter. Since Father Sheedy wrote the article begging the question of the physiological effect of the treatment upon the defendant, his conclusion is apropos of the case here to show his total subjective approach to this defendant and his problem. He concluded at page 123 as follows:

> "Once more, in conclusion, it may be held that these heavy strictures should not be made to tie in Townsend's case because the injections were made professedly to heal and soothe, not to extort a confession. However, the result followed just as precisely as if purposeful narcointerrogation had been the express aim. Therefore, *it is argued here* that Townsend was morally compelled to act as a witness against himself, and was deprived of justice and due process of law." (Emphasis added.)

CONCLUSION.

The order of the court below affirming the dismissal of the petition for a writ of *habeas corpus*, based upon an examination of the state court trial record, on the ground that no federal constitutional question resulted from the trial of the defendant is correct and the petitioner's application for a *certiorari* should be denied.

Respectfully submitted,

BENJAMIN S. ADAMOWSKI,
State's Attorney of Cook County, Illinois,
507 County Building,
Chicago 2, Illinois,
FRanklin 2-3000,
Attorney for Respondents.

FRANCIS X. RILEY,
Assistant State's Attorney,
Of Counsel.